

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
HOMEWORKS TRI-COUNTY ELECTRIC)	
COOPERATIVE for a waiver from)	Case No. U-20057
certain provisions of the code of conduct approved)	
by the Commission in Case No. U-12134.)	
_____)	

At the February 22, 2018 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER SOLICITING COMMENTS

On January 23, 2018, HomeWorks Tri-County Electric Cooperative (HomeWorks) filed an application and supporting testimony for a waiver from certain provisions of the code of conduct approved by the Commission in Case No. U-12134, if required, to facilitate the provision of high speed broadband in unserved and underserved portions of rural Michigan. On February 5, 2018, HomeWorks supplemented its application by filing two exhibits. HomeWorks provides that in connection with its effort, the company is proceeding with the deployment of a fiber ring linking its utility substations to foster a smarter grid and to help its member consumers manage their energy use. Homeworks' filing further advises that the fiber ring will provide critical infrastructure required to deploy broadband.

HomeWorks' filings, which are attached to this order as Exhibit A, note that inasmuch as the company's provision of high speed broadband service may be covered by the Commission's code of conduct, it is seeking a waiver of various provisions to facilitate the expansion of high speed broadband service to the underserved and unserved. More specifically, HomeWorks requests a waiver, if required, from code of conduct Sections II. A, D, E, H, and L, and Section IV. HomeWorks contends that because no increase in rates is requested in its application, *ex parte* approval is reasonable and appropriate.

The Commission finds that, before acting on HomeWorks' application, interested persons should have an opportunity to comment regarding the cooperative's request for the code of conduct waiver. To that end, the Commission directs that its Executive Secretary serve copies of this order and its attachment on all known broadband providers in this state and on Connect Michigan, a Michigan-based organization devoted to expanding broadband.

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets Website at: michigan.gov/mpscdockets. Requirements and instructions for filing can be found in the E-Dockets help tab on the Commission's website. Documents may also be submitted, in Word or PDF format, as an attachment to an e-mail sent to mpscdockets@michigan.gov. If you require assistance prior to e-filing, contact the Commission Staff at (517) 284-8090 or by e-mail at mpscdockets@michigan.gov. All information received by the Commission will become public information, posted on the Commission's website, and subject to disclosure.

Any person may submit written comments regarding these issues. Written comments should be sent to: Executive Secretary, Michigan Public Service Commission, P. O. Box 30221, Lansing, Michigan 48909. Electronic comments should be e-mailed to: mpscdockets@michigan.gov. All

comments should reference Case No. U-20057 and be received no later than March 8, 2018. All comments received by the Commission will become public information, posted on the Commission's website, and subject to disclosure.

THEREFORE, IT IS ORDERED that:

A. The Commission's Executive Secretary shall serve copies of this order and its attachment on all known providers of broadband services in this state and on Connect Michigan.

B. Any interested person may, by March 8, 2018, file comments in this docket regarding the application filed by HomeWorks Tri-County Electric Cooperative for a waiver from certain provisions of the code of conduct approved by the Commission in Case No. U-12134, if required, to facilitate the provision of high speed broadband in unserved and underserved portions of rural Michigan.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

By its action of February 22, 2018.

Norman J. Saari, Commissioner

Kavita Kale, Executive Secretary

Rachael A. Eubanks, Commissioner

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_____)**

APPLICATION

HomeWorks Tri-County Electric Cooperative (“HomeWorks”) respectfully submits this application for a waiver from certain provisions of the code of conduct approved by the Michigan Public Service Commission (“Commission”) in Case No. U-12134, if required, to facilitate the provision of high-speed broadband in unserved and underserved portions of rural Michigan. In support, HomeWorks states as follows:

Description of HomeWorks

1. HomeWorks is a Michigan non-profit corporation engaged in the distribution and sale of electric energy to approximately 22,193 member customers in portions of Barry, Clare, Clinton, Eaton, Gratiot, Ingham, Ionia, Isabella, Jackson, Mecosta, Montcalm, Osceola, and Saginaw Counties in Michigan.
2. Prior to March 2, 2010, HomeWorks had been under the regulatory jurisdiction of the Michigan Public Service Commission (“Commission”) since 1965.
3. HomeWorks transitioned to member regulation, in accordance with the Electric Cooperative Member-Regulation Act (the “Member Regulation Act”), MCL 460.31, in 2010.

See Commission Order dated March 2, 2010 in Case No. U-16185. Since that time, HomeWorks sets its rates in accordance with the Member Regulation Act.

The Code of Conduct

4. In 2001, the Commission adopted a Code of Conduct, which is intended to promote fair competition by establishing measures to prevent cross-subsidization, information sharing, and preferential treatment. In summary, the Code of Conduct requires structural or functional separation when a utility provides regulated and unregulated services in order to prevent anticompetitive behavior. Specifically, with regard to providing broadband services, Section II of the Code of Conduct provides, in relevant part, that:

An electric utility or alternative electric supplier that offers both regulated and unregulated services shall do so with the structural or functional separation needed to prevent anticompetitive behavior. This includes, but is not limited to, the following:

A. An electric utility shall not offer unregulated services or products except through one or more affiliates or through other entities within the existing corporate structure, such as divisions.

* * *

D. An electric utility or alternative electric supplier and its affiliates or other entities within the existing corporate structure shall not share facilities, equipment, or operating employees, but may share computer hardware and software with documented protection to prevent discriminatory access to competitively sensitive information.

E. An electric utility's or alternative electric supplier's operating employees and the operating employees of its affiliates or other entities within the existing corporate structure shall function independently of each other and maintain separate offices.

* * *

H. An electric utility and its affiliates or other entities within the existing corporate structure offering unregulated services or products shall not engage in joint advertising, marketing, or other promotional activities related to the provision of unregulated

services, nor shall they jointly sell services. The electric utility shall not give the appearance in any way that it speaks on behalf of its affiliates or other entities within the existing corporate structure offering unregulated services or products, nor shall the electric utility permit an affiliate or other entity within the existing corporate structure offering unregulated services or products to give the appearance that it speaks on behalf of the electric utility.

* * *

L. If an electric utility, its affiliate, or other entity within the existing corporate offers an unregulated service, any use of its logo shall include, in a clearly visible position and easily readable by customers, the following statement: (Service) is not regulated by the Michigan Public Service Commission.

October 29, 2001 Code of Conduct, Section II.

5. Additionally, Section IV of the Code of Conduct states that “[i]nformation obtained by an electric utility or alternative electric supplier in the course of conducting its regulated business in Michigan shall not be shared directly or indirectly with its affiliates or other information within its corporate structure unless that same information is provided to competitors operating in the state on the same terms and conditions and contemporaneously.” This Section would prohibit HomeWorks from sharing with its broadband subsidiary customer names/addresses or other information without also sharing that information with its competitors.

6. Section VI of the Code of Conduct provides that an electric utility “may request a waiver from one or more provisions of this code of conduct.” To obtain such a waiver, the utility must show that “a waiver will not inhibit the development or functioning of the competitive market.” *Id.* In granting prior waivers, the Commission has always considered whether such waivers were “reasonable and **in the public interest.**” See, e.g., *In re Consumers Energy Company & The Detroit Edison Company*, Case No. U-12134 (NSP-W) (Jan 21, 2003, p 4; May 23, 2003, p 3; December 18, 2003, p 2) (emphasis added); *In re Thumb Electric Cooperative*, Case No. U-14778 (April 30, 2009, p 2; May 1, 2012, p 2). In making this decision, the

Commission has considered the “support” for an offered program, *In re Consumers Energy Company & The Detroit Edison Company*, Case No. U-12134 (February 20, 2003, p 8), as well as the “potential[] benefit” to the public. *In re Consumers Energy Company & The Detroit Edison Company*, Case No. U-14283 (June 30, 2005, p 5).

Code of Conduct Waiver

7. HomeWorks is working to bring high-speed broadband service to unserved and underserved portions of rural Michigan. In connection with that effort, HomeWorks is proceeding with the deployment of a fiber ring that links its substations for the purpose of fostering a smarter grid. This asset will ultimately help member consumers manage their energy use and provide the critical infrastructure required to deploy broadband.

8. Inasmuch as the provision of high speed broadband service to unserved and underserved rural areas may be covered by the Commission’s Code of Conduct adopted in Case No. U-12134, this filing and the accompanying testimony of HomeWorks’ CEO Mark Kappler, are submitted in support of all necessary Code of Conduct waivers.

9. Mr. Kappler’s testimony requests and supports code of conduct waivers from portions of Sections II. A, D, E, H, and L and Section IV, if required.

10. In the event it is determined that additional waivers are required to allow HomeWorks to provide high speed broadband to unserved and underserved portions of rural Michigan, HomeWorks requests that such additional waivers be granted.

11. HomeWorks represents that the requested waivers are reasonable, appropriate and in the public interest.

12. Inasmuch as no increase in rates is requested in this application, an expedited, *ex parte* approval is respectfully requested.

WHEREFORE, HomeWorks respectfully requests an expedited, *ex parte* order granting the code of conduct waivers requested herein, or a ruling that no such waivers are required.

Respectfully submitted,

DYKEMA GOSSETT PLLC

Attorneys for
HomeWorks Tri-County Electric Cooperative

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)	

DIRECT TESTIMONY AND EXHIBITS

OF

MARK KAPPLER

ON BEHALF OF

HOMEWORKS TRI-COUNTY ELECTRIC COOPERATIVE

January 23, 2018

STATE OF MICHIGAN

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DIRECT TESTIMONY OF MARK KAPPLER

Q1 PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A₁ My name is Mark Kappler. My business address is 7973 E. Grand River Ave., Portland,
MI 48875.

Q2 BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A₂ I am the General Manager and CEO of HomeWorks Tri-County Electric Cooperative
("HomeWorks" or the "Company"), a position I assumed in 2008. From 1998 to 2008, I
served as the Company's Chief Operating Officer.

Q3 PLEASE SUMMARIZE YOUR BACKGROUND.

A₃ I am a 1981 graduate of Michigan State University (BA in Accounting and Finance) and
a 2006 graduate of Davenport University (Masters in Business Administration). I joined
HomeWorks in 1996 as Accounting Supervisor and have subsequently assumed positions
of increasing responsibility. In my present position as General Manager, I am

responsible for power requirement studies, O&M studies, rate studies, and other general manager duties.

Q₄ PLEASE DESCRIBE HOMEWORKS.

A₄ HomeWorks is a Michigan non-profit corporation engaged in the distribution and sale of electric energy to approximately 22,193 member customers in portions of Barry, Clare, Clinton, Eaton, Gratiot, Ingham, Ionia, Isabella, Jackson, Mecosta, Montcalm, Osceola, and Saginaw Counties in Michigan.

Q₅ WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS DOCKET?

A₅ HomeWorks is working with a coalition of allies and appropriate state and federal officials to bring high-speed broadband service to unserved and underserved portions of rural Michigan. HomeWorks' goal is to bring high-speed internet to unserved and underserved rural Michigan and rural America. HomeWorks currently plans to proceed with the deployment of a fiber communications ring that links its substations for the purpose of fostering a smarter grid. Not only will this asset ultimately help member consumers manage their energy use, it will provide the critical infrastructure required to deploy broadband while maintaining high service reliability.

Inasmuch as providing high speed broadband service to unserved and underserved rural areas may be covered by the Commission's Code of Conduct adopted in Case No. U-12134, this filing and my testimony are submitted in support of all necessary Code of Conduct waivers.

Q₆ HAS HOMEWORKS OBTAINED PRIOR WAIVERS FROM THE COMMISSION WITH RESPECT TO THE CODE OF CONDUCT?

A₆ Yes. HomeWorks received waivers from the Commission from the Code of Conduct in Case No. U-12134 on October 3, 2002. The Commission granted HomeWorks a waiver from Section II.F. (to allow HomeWorks to finance or cosign loans for affiliates) so long as the cooperative's margin (or equity) ratio was at least 40% and remained above that level. The Commission also granted HomeWorks' waiver from Section II.K. and II.L. to allow the joint use of its logos so long as costs are fully and appropriately allocated between regulated and unregulated services or affiliates and so long as promotional material did not include mass marketing material such as newspaper or magazine advertisements, bill boards, etc. Finally, the Commission also granted a waiver from Section IV to allow for the disclosure of certain information for telecommunication ventures so long as the use of the information was for HomeWorks' telecommunication ventures only and costs were appropriately allocated. The order in Case No. U-12134 made clear that the waivers granted in that order applied only to programs contemplated in the request for waivers and new waivers would need to be sought for new projects.

Q₇ PLEASE DESCRIBE THE REQUESTED WAIVERS RESULTING FROM THE PROVISION OF HIGH SPEED BROADBAND SERVICE IN UNSERVED AND UNDERSERVED RURAL AREAS.

A₇ Set forth below are applicable provisions of the Code of Conduct, requested waivers and the bases therefore:

II. Separation

An electric utility . . . that offers both regulated and unregulated services shall do so with the structural or functional separation needed to prevent anticompetitive behavior. This includes, but is not limited to, the following:

1 **A. An electric utility shall not offer unregulated**
2 **services or products except through one or more**
3 **affiliates or through other entities within the**
4 **existing corporate structure, such as divisions.**

5 HomeWorks plans to provide broadband services to underserved members
6 through a division within HomeWorks. According to the Federal Communications
7 Commission (“FCC”) data competitive maps, 48% of members within the HomeWorks’
8 service territory are currently underserved or unserved when it comes to high-speed
9 internet access. Thus, there is no real competitive concern implicated here and the
10 concerns intended to be covered by the Code of Conduct are not present. Moreover,
11 preventing HomeWorks from offering broadband services would be to the detriment of
12 those underserved or unserved rural locales. The proposed corporate structure is attached
13 hereto as Exhibit A. For these reasons, HomeWorks requests a waiver from Section II.A.
14 of the Code of Conduct for the provision of high speed broadband in unserved and
15 underserved rural areas.

16 **D. An electric utility . . . and its affiliates or**
17 **other entities within the existing corporate**
18 **structure shall not share facilities, equipment, or**
19 **operating employees, but may share computer**
20 **hardware and software with documented**
21 **protection to prevent discriminatory access to**
22 **competitively sensitive information.**

23 HomeWorks requests a waiver of Section II.D. to allow the Company to share
24 facilities, equipment, and operating employees, to facilitate the provision of high speed
25 broadband service in unserved and underserved rural areas. HomeWorks plans to
26 continue to allocate costs in compliance with Code of Conduct requirements and the
27 expense allocation manual attached as Exhibit B. As noted above, a key purpose of
28 planned investment is to foster a smarter grid. The proposed investment will ultimately

1 help member consumers manage their energy use – not to mention the provision of high
2 speed broadband service in unserved and underserved rural areas. If the Commission
3 denies the requested waiver to Section II.D., being forced to maintain separate facilities,
4 equipment, and/or operating employees will likely make the provision of high speed
5 broadband less affordable to our rural consumers.

6 **E. An electric utility's . . . operating employees**
7 **and the operating employees of its affiliates or**
8 **other entities within the existing corporate**
9 **structure shall function independently of each**
10 **other and maintain separate offices.**

11 HomeWorks requests a waiver of Section II.E. to allow the Company to share
12 operating employees and so that separate offices not be required. First, as noted above, a
13 key purpose of planned investment is to foster a smarter grid. The proposed investment
14 will ultimately help member consumers manage their energy use – not to mention the
15 provision of high speed broadband service in unserved and underserved rural areas.
16 Second, HomeWorks will continue to allocate costs in compliance with Code of Conduct
17 requirements and the expense allocation manual attached as Exhibit B. Third, just as was
18 the case with the requested waiver for Section II.D., if the Commission denies the
19 requested waiver to Section II.E., requiring operating employees within the existing
20 corporate structure to function independently of each other and maintain separate offices
21 will likely make the provision of high speed broadband less affordable to our rural
22 consumers.

23 **H. An electric utility and its affiliates or other**
24 **entities within the corporate structure . . .**
25 **offering unregulated services or products shall**
26 **not engage in joint advertising, marketing, or**
27 **other promotional activities related to the**
28 **provision of unregulated services, nor shall they**

jointly sell services. The electric utility shall not give the appearance in any way that it speaks on behalf of its affiliates or other entities within the existing corporate structure offering unregulated services or products, nor shall the electric utility permit an affiliate or other entity within the existing corporate structure offering unregulated services or products to give the appearance that it speaks on behalf of the electric utility.

Due to the nature of the products and services offered, HomeWorks requests that a waiver from Section II.H. of the Code of Conduct be granted with regard to broadband services. HomeWorks intends on using its trademarked HomeWorks logo, which is widely respected in the market area and provides customers with assurance of reliability and satisfaction associated with that service. HomeWorks will continue to apply the expense allocation manual (Exhibit B), which will be updated to reflect any changes in business and environment, but allowing joint advertising would help support HomeWorks' overall goals here—improve the smart grid and provide broadband service to its underserved and unserved members. HomeWorks requests a waiver from Section II.H. of the Code of Conduct for the provision of high speed broadband in unserved and underserved rural areas.

L. If an electric utility, its affiliate, or other entity within the existing corporate [structure] offers an unregulated service, any use of its logo shall include, in a clearly visible position and easily readable by customers, the following statement:

(Service) is not regulated by the Michigan Public Service Commission.

HomeWorks requests a waiver of Section II.L. to allow use of HomeWorks' logo without the statement regarding regulation. As noted above, a key purpose of planned investment is to foster a smarter grid. The proposed investment will ultimately help

member consumers manage their energy use – not to mention the provision of high speed broadband service in unserved and underserved rural areas. Moreover, just as was the case with the requested waiver for Section II.D., if the Commission denies the requested waiver to Section II.L., requiring a statement distinguishing regulated services will likely make the provision of high speed broadband less affordable to our rural consumers.

Section IV. Disclosure of Information. Information obtained by an electric utility . . . in the course of conducting its regulated business in Michigan shall not be shared directly or indirectly with . . . other entities within its corporate structure unless that same information is provided to competitors operating in the state on the same terms and conditions and contemporaneously.

Because HomeWorks’ broadband business will be operated as a division within HomeWorks rather than through a different entity within the corporate structure, HomeWorks does not believe this section of the Code of Conduct is implicated. Notwithstanding, in an abundance of caution, HomeWorks requests that, to the extent the Commission determines that Section IV limits HomeWorks’ disclosure of information among HomeWorks’ divisions, HomeWorks requests a waiver from Section IV. Prohibiting information sharing between HomeWorks and its broadband division would be inefficient and would make the provision of high speed broadband less affordable to our rural consumers, which is the goal of providing this service.

Q₈ ARE HOMEWORKS RATES SET BY THE COMMISSION?

A₈ No. In 2010, HomeWorks transitioned to member regulation, in accordance with the Electric Cooperative Member-Regulation Act (the “Member Regulation Act”), MCL 460.31. Since that time, HomeWorks sets its rates in accordance with the Member Regulation Act. Accordingly, HomeWorks must satisfy the applicable TIER

requirements and, therefore, has no incentive to over-earn. As such, although the Commission has no formal process by which to confirm HomeWorks' compliance with the expense allocation manual, HomeWorks has set—and will continue to set—rates in a manner that ensures there will be no inappropriate costs subsidies with regard to HomeWorks rate structure.

Q₉ HAVE THERE BEEN ANY FORMAL COMPLAINTS FILED AGAINST HOMEWORKS WITH RESPECT TO THE CODE OF CONDUCT?

A₉ No, there have not.

Q₁₀ DOES THIS CONCLUDE YOUR INITIAL PREFILED DIRECT TESTIMONY IN THIS DOCKET?

A₁₀ Yes, it does.

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Exhibit A

Corporate Structure

HomeWorks Tri-County Electric Cooperative



Broadband Division
(a division of HomeWorks Tri-County Electric Cooperative)

Exhibit B

HomeWorks Tri-County Electric Cooperative

Expense Allocations to Unregulated Operations

HomeWorks Tri-County Electric Cooperative (“Homeworks”) has established a separate division within the Cooperative structure and accounting records for broadband. Homeworks provides various services such as administrative, marketing, financial, customer service support, and facilities. These costs are allocated to the broadband division as set forth in this policy.

Salaries and Wages:

Salaries and wages costs are distributed based upon the number of hours worked supporting the broadband division. Payroll is processed on a bi-weekly basis, with a monthly total being allocated to the broadband division after the last pay of each month. The accounting software handles that allocation.

Payroll Overheads/Benefits:

Payroll Overheads are comprised of the Federal OASDI, Medicare, federal unemployment, and state unemployment taxes.

Benefits are comprised of health coverage, life insurance, long term disability, employer 401K contribution, and retirement.

The monthly costs of these overheads and benefits are totaled each month and divided into the monthly payroll. The percent derived from the calculation is then applied to the salaries and wage costs captured in the payroll system for the broadband division to determine the amount to charge for payroll overhead/benefits. The accounting software handles this allocation.

Vacation, sick, and holiday expenses are totaled each month and divided into the monthly payroll. The percent derived from the calculation is then applied to the salaries and wage costs captured in the payroll system for the broadband division to determine the amount to charge for payroll overhead/benefits. The accounting software handles this allocation.

Workers compensation coverage cost is allocated to unregulated operations at the time such invoice is paid by the cooperative. The expense allocated is based on the salary expense for the unregulated operation.

Facility Costs:

We allocate building insurance, depreciation, property taxes, and utility costs to each company/activity based on the percentage of the square feet occupied by such company/activity.

We have calculated a monthly charge for common office space and office equipment costs, which will be allocated to each company/activity based on each unit’s number of square feet occupied. This charge covers common areas, break rooms, copy machines, telephones, fax machines, and building maintenance.

Land, warehouse, and outside vehicle storage in all offices is leased annually.

All of these prices are based on the higher of actual or the estimate of the current fair market value. We update these costs periodically.

All office equipment and furniture will be billed to the appropriate company as purchases are made.

Vehicle Costs:

There is very little use of cooperative vehicles by the broadband division. Cost of cooperative vehicles used to travel to broadband related locations, or on behalf of a broadband division activity, is allocated based on actual costs per mile. This includes the operating cost of the vehicle (depreciation, insurance, fuel, and repairs).

Miscellaneous Costs:

1. Country Lines member publication ads. Where the broadband division uses this medium for advertising, the bill is allocated to the various beneficiaries based on the rate scale provided by the publisher.
2. Corporate image advertising that promotes the cooperative and broadband division's activities are allocated according to the space allocated for each of the business lines represented in the ad.
3. Country Lines publication is mailed to cooperative customers. To the extent Country Lines is mailed to Homeworks' broadband customers who are not also Homeworks' electric customers, the cost thereof is allocated to each business based on the proportionate number of customers.
4. Yellow page directory advertising includes costs for cooperative and broadband division businesses. The cost thereof is allocated to each business based on the portion of the overall ad that mentions the various lines of businesses.
5. Occasionally when office supplies are ordered, the order may include purchase of office supplies for the broadband division's activities, in which case these costs are allocated to the broadband division at the direct cost amount.
6. Other examples that the cooperative may purchase and allocate to the broadband division are cell phone charges, remote call center, legal services, and accounting services.

The broadband division is part of the Cooperative structure. Invoices are directly charged to the broadband division. Any invoices that include both Cooperative and broadband costs are allocated as described above.